Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

TERM: OCTOBER, 1996

ALLAN M. PICKETT

Petitioner

VS.

AMERICAN BREEDERS SERVICE

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND

PETITION FOR WRIT OF CERTIORARI

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PRO SE

62 pp

Petitioner Allan M. Pickett, a *pro se* defendant, had a default judgment illegally entered against him in the District Court for Frederick County, Maryland for failure to answer interrogatories propounded by the Respondent herein, when in fact not only had the answers to interrogatories been filed, but the court granted a default judgment **before** Petitioner's time to respond to the motion for sanctions generating the default judgment had expired. At a hearing on Petitioner's *pro se* motion to vacate the default judgment, the same court misapplied applicable statutes and denied the Petitioner's request, relying, in addition, not only upon erroneous, uncorrected information alleged by counsel in its motion for sanctions, but also upon the court's own erroneous recollection of its decision at a prior hearing on a previous motion for sanctions. Petitioner appealed this decision on the record to the Circuit Court for Frederick County, Maryland which, nearly one year after a hearing, issued an Order affirming the District Court, but illegally provided no opinion justifying its findings. The Court of Appeals of Maryland denied a Petition for Writ of Certiorari which challenged the Circuit Court's illegal order.

The actions of the Circuit Court in failing to provide the legal basis for its affirmance of the lower court and the District Court's illegal entry of a default judgment against your *pro se* Petitioner constitute a violation of the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution, as well as the opinions of this Honorable Court and other federal courts, emanating therefrom.

Question Presented for Review

1). Does the failure by an appellate state court to issue a written opinion supporting its decision, as required by statute, coupled with the lower court's entry of a default judgmen:

both prior to the statutory time within which the defaulting party had to respond and based upon erroneous factual recollections of the court and conclusions supplied by the opposing party, constitute a violation of the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution?

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ON PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND

PETITION FOR WRIT OF CERTIORARI

Jurisdiction

The decision of the Circuit Court for Frederick County, Maryland, sitting as an appellate court, for which Petitioner seeks review, was entered on September 4, 1996. Petitioner file an application for review of that decision to the Court of Appeals of Maryland, which denied his Petition for

Writ of Certiorari on December 11, 1996.

This Court has jurisdiction to review the Judgment of the Court of Appeals, pursuant to **28 U.S.C. 1257(a) (1948),** which provides:

> Final judgments or decrees rendered by the highest court of a state in which a decision could be had may be reviewed by the Supreme Court by Writ of Certiorari where the validity of a treaty or statute of any state is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties of or statutes of, or any commission held or authority exercised under, the United States.

Constitutional Provisions and Statutes Involved

1). Amendment 5, United States Constitution, provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or in public danger; nor shall any

> person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

2). Amendment 14, United States Constitution, which provides in part (full text provided in **APPENDIX**, page 4):

> . . . Nor shall any State deprive any person of life, liberty, or property, without due process of law . . .

Statement of the Case

On or about January 3, 1994, Respondent herein filed suit against the Petitioner in the District Court for Carroll County, Maryland, for alleged non-payment of merchandise provided. The case was transferred to the District Court for Frederick County, Maryland on or about April 25, 1994. On September 8, 1994, the District Court, upon Respondent's motion for sanctions, signed a show cause order requiring Petitioner to respond on or before September 29, 1994 to Interrogatories propounded by Respondent. Petitioner filed *pro se* answers to the Interrogatories and mailed a copy to Respondent on September 29, 1994. At the Show Cause hearing before the District Court on September 30, 1994, which also was the scheduled date of the trial on the merits, Petitioner advised the court that he had called counsel for Respondent on September 29 and advised his office that answers had been mailed (**APPENDIX,** page 14).

After a short colloquy, (**APPENDIX,** pages 14-15), the court denied Respondent's motion for sanctions and postponed further matters in the case to allow Respondent time to examine the *pro se* answers. The court, after a request by counsel for respondent to enter a default judgment and proceed only on damages, stated (**APPENDIX**, page 15)

> "I'm not willing to do that (sic)
> I will do it this way. I'm going
> to continue this matter so that
> you have the opportunity to review
> these Answers to Interrogatories- -
> I'll reset it upon your request and
> your estimate of the trial time- - so
> nothing else is going to happen until
> I hear from Plaintiff on this thing.
> I will give you the opportunity to
> review the Interrogatories and
> estimate the trial time. Anything else?

The court also requested that each of the parties advise the court of the estimated time for trial so that the matter could be set in on the merits (**APPENDIX**, page 15).

On or about October 28, 1994, Respondent filed a second motion for sanctions (**APPENDIX,** pages 27-29). The motion contained patently erroneous allegations, such as the fact that answers to interrogatories "still have not been produced to the Plaintiff or to the Court," (**APPENDIX,** page 28) and that "At hearing on September 30, 1994 this Honorable Court Ordered the parties to narrow the issues before rescheduling this matter for trial " (**APPENDIX,** page 28). On November 10, 1994, which was the final day for the Petitioner to respond to the second motion, and before he could do so, the District Court entered an Order

(**APPENDIX,** page 3) that " . . . Judgment by Default be and the same is hereby ordered against the Defendant. Set for trial." The matter was then set in for a hearing on damages.

On or about December 13, 1994, your Petitioner filed a *pro se* Motion to Vacate the order of November 10, 1994. This matter was heard prior to the scheduled damage hearing, set for January 13, 1995, and at which your Petitioner appeared *pro se*. The court indicated to your Petitioner (**APPENDIX,** page 22)

> "Well, now, Mr. Pickett, when we had the September 30 hearing, that one page answer was in the file but that was determined to be insufficient and this motion for sanctions was filed alleging that you still had not adequately answered the interrog.-tories . . . In the requisite time past with you not responding to that motion and thereafter an order placing you in default was signed."

After denying Petitioner's motion to vacate, and after a hearing on damages, the court entered a judgment in favor of Respondent for $11, 741.10. Petitioner then obtained counsel and noted an appeal **on the record** (as required by Maryland Rule 7-102(a)(1), see **APPENDIX**, page 40) to the Circuit Court for Frederick County. After the submission of memoranda, and a hearing on September 26, 1995, the Circuit Court, on September 4, 1996, issued an "Order" affirming the judgment of the District Court (**APPENDIX,** page 2), but which failed to state the legal basis upon which the court arrived at its decision.

Petitioner then filed a timely Petition for Writ of

Certiorari to the Court of Appeals of Maryland (**APPENDIX,** pages 6-13), seeking a Writ directing the Circuit Court to issue a concise opinion in conformity with its ruling as required by Maryland Rule 7-113(h) (**APPENDIX,** page 30). On December 11, 1996, the Court of Appeals issued an Order (**APPENDIX,** page 1) denying Petitioner's application for writ. It is from that denial that this Petition for Writ of Certiorari is filed.

Reasons for Granting Writ

Petitioner respectfully suggests that a careful, chronological analysis of the judicial decisions in this case lead to the inexorable conclusion that he was deprived of constitutional and judicially-interpreted procedural due process in violation of the Fifth and Fourteenth Amendments to the United States Constitution. The Fourteenth Amendment imposes on the state

> "a duty to provide fair procedures (which give) the citizen the opportunity to try to prevent the deprivation from happening . . . In a procedural due process claim, it is not the deprivation of property or liberty that is unconstitutional, it is the deprivation of property or liberty without due process of law—without adequate procedures."

Daniels v Williams, 474 U.S. 327, 338-339, 106 S. Ct. 662, 678, 88 L.Ed.2d 662 (1986) (Stevens, J., concurring). As such, the fundamental requirement of due process is the opportunity to be heard "at a meaningful time and **in a meaningful manner**." *Boddie v Connecticut, 401* U.S. 371, 377, 91 S.Ct. 780, 785, 28 L.Ed.2d 113 (1971),

Matthews v Eldridge, 424 U.S. 319, 333, 96 S.Ct. 893, 902, 47 L.Ed.2d 18 (1976); *Armstrong v Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191, 14 L.Ed.2d 62 (1965) (Emphasis supplied). Stated another way,

> ". . . at a minimum they (the words of the Due Process Clause) require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing **appropriate to the nature of the case**." (Emphasis supplied)

Mullane v Central Hanover Bank & Tr. Co., 339 U.S. 306, at 313, 70 S.Ct. 652, at 656, 94 L.Ed.2d 865. In analyzing due process claims, this Honorable court has noted that rules governing due process should not be applied rigidly, but rather, "'due process,' unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place, and circumstances," *Cafeteria Workers v McElroy*, 367 U.S. 886, 895, 81 S.Ct. 1743, 1748, 6 L.Ed.2d 1230 (1961), and, as a result, " . . . is flexible and calls for such procedural protections as the particular situation demands." *Morissey v Brewer*, 408 U.S. 471, 481, 92 S.Ct. 2593, 2600, 33 L.Ed.2d 484 (1972).

This Honorable Court has fashioned a three-stage analysis of procedural due process claims, see *Davidson v Cannon*, 474 U.S. 344, 353, 106 S.Ct. 668, 673, 88 L.Ed. 2d 677 (1986) (Blackmun dissent favoring two-step process). First, it must be determined whether the interests of the party aggrieved were a right " . . . encompassed within the Fourteenth amendment's protection of life, liberty, and property." *Ingraham v Wright*, 430 U.S. 651, 672, 97 S.Ct. 1401, 1413, 51 L.Ed.2d 711 (1977). If there is such a right,

then it must be determined whether the state's conduct amounted to a constitutional deprivation of that right. *Daniels*, supra, at 474 U.S. 331, 106 S.Ct. at 664-665. Finally, if the aggrieved party had a constitutionally protected interest, and if the state deprived him of that interest, the inquiry becomes what process is due in the particular situation. *Morissey v Brewer*, 408 U.S. 471, 481, 92 S.Ct. 2593, 2600, 33 L.Ed.2d 484 (1972).

This Honorable Court steadfastly has held that "a cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause." *Logan v Zimmerman Brush Co.*, 455 U.S. 428, 429, 101 S.Ct. 1148, 1154, 71 L.Ed.2d 265 (1982); *Martinez v California*, 444 U.S. 277, 281-282, 100 S.Ct. 553, 556-557, 62 L.Ed.481 (1980). The *Logan* court noted, at page 429, that

> "The Court traditionally has held that the Due Process Clauses protect civil litigants who seek recourse in the courts. either **as defendants hoping to protect their property** or as plaintiffs attempting to redress grievances." (Emphasis supplied)

In the instant case, Petitioner's cause as a civil litigant in defending a potential deprivation of his property through the rendering of a judgment against him squarely places him in the context of one who is asserting a valid "property right" as judicially defined, supra.

Petitioner also asserts several egregious violations of his procedural due process which both singly and cumulatively amounted to a constitutional deprivation of his property right as a civil litigant. First, it should be noted that although the transcript of the hearing on September 30, 1994 indicated that the court expressly denied Respondent's motion

for sanctions, Respondent nevertheless alleged in its second motion that the parties were ordered by the court to narrow the issues (**APPENDIX**, page 15). This erroneous allegation, never corrected by Respondent's counsel, and pointed out by Petitioner as erroneous, clearly influenced the court at the hearing on Petitioner's *pro se* motion to vacate the default judgment on January 13, 1995 (**APPENDIX**, pages 17-26). Counsel for Respondent further perpetuated this error in the pleadings when, at the January 13, 1995 hearing on Petitioner's motion to vacate, he stated

> "Your honor, if I could be of some assistance, there, I will tell you that he filed one page answers, which I indicated to the court on September 30, were not under oath, and were not even responsive to the questions. . .
>
> The judge, that day, and I really don't remember don't remember (sic) who was presiding on September 30, ordered him to answer those questions **more fully and under oath**. He never did that." (Emphasis supplied)

The court then proceeded to parrot that erroneous information to the Petitioner (See Statement of the Case herein, page 4, supra). Clearly, counsel's erroneous representations and the court's reliance upon them served to strengthen the court's resplve to uphold the granting of the default judgment.

Curiously, despite representations to the contrary, Respondent's attorney on January 13, 1995 was **not** the attorney who appeared on Respondent's behalf at the

September 30, 1994 hearing (**APPENDIX**, page 24). After Petitioner pointed out to the court that Respondent's attorney was not the attorney who was present in court on September 30, 1994, counsel for Respondent advised the court (**APPENDIX**, page 24)

> "And he (the Petitioner) is right, I was not here that day. And my client tells me one of my associates was here. I don't know what the court said. Only what my associate told me."

Similarly, although counsel for Respondent advised the court on several occasions that Petitioner's answers were not under oath, he also recanted that allegation as well (**APPENDIX**, page 25), stating

> "I do have to correct for the record. He did file it under oath. I see it now."

In ruling on the motion to vacate, the court not only applied Respondent's litany of factually deficient conclusions, but misstated his own ruling at the prior hearing (**APPENDIX**, pages 25-26)

> "All right. The gist of the motion for sanctions was that the answers to interrogatories were not adequate. The Court allowed the proper statutory time for the Respondent to correct or to respond in a motion, neither of which he did within that time. The motion for sanctions was granted. The Court found that the answers for interrogatories were

> not sufficient or adequate. The order was signed on November 10 placing the defendant in default. The court declines to vacate that order."

Petitioner notes that what the court stated in *Shubinsky v United States*, 488 F.2d 1003, 1006 (1973)(U.S. Ct. Cl.) most accurately summarizes the law under these circumstances:

> "A decision made 'with blinders on,' based on misinformation or a lack of information, cannot be binding as a matter of fundamental fairness and due process."

See *Covington v Dept. Of Health and Human Serv.*, 750 F2d. 937, at 943 (1984) (U.S.C.A. Fed. Circuit)..

In addition to the factually deficient representations of counsel for the Respondent and the court's own adoption of those statements to uphold the default judgment, the court itself also committed serious and prejudicial errors in applying the Maryland Rules of Procedure in this case. Maryland Rule 3-421(h) (**APPENDIX**, page 33) provides for sanctions **only for failure to respond to interrogatories.** Maryland Rule 3-421(g) (**APPENDIX**, page 33) provides for an order to compel discovery when **inadequate** discovery has been provided. Because Petitioner had provided discovery as indicated in the September 30 transcript (**APPENDIX**, page 14) and at the hearing on January 13, 1995 (**APPENDIX**, pages 21-22), Respondent's second "motion for sanctions" was therefore inappropriate and should have been summarily denied. Rather, Respondent should have filed a Motion to Compel under Rule 3-421(g) seeking further discovery if it were not satisfied with the answers provided. Had that motion been before the court, the court would have

had authority only to order the Petitioner to more fully and properly answer the interrogatories. Therefore, Respondent properly could have filed a second motion for sanctions **only** if there were a prior order compelling further discovery, and that discovery had not been forthcoming.

Even if the bounds of credulity could be stretched to interpret Respondent's second motion as having been properly before the court, Petitioner notes that even more prejudicial was the court's action in granting the default judgment **before** the expiration of time within which the Petitioner could have responded to the motion. Maryland Rule 3-311(d) (**APPENDIX**, page 37) provides that a party served with a motion must respond within five days. Under Maryland Rule 1-203(a) (**APPENDIX**, page 38), when any responsive pleading is required within five days, Saturdays, Sundays, and holidays are not counted in the time computation. Under Maryland Rule 1-203(d), (**APPENDIX**, page 39) when a pleading is sent first class mail, the responding party has three additional days to respond to it. Therefore, if a pleading containing a motion is mailed, the receiving party has eight days, exclusive of Saturdays, Sundays, and holidays, to file its response. Applying the rules to the instant case, Respondent certified service of its motion to Petitioner on Friday, October 28, 1994 (**APPENDIX**, page 29). Thus, the time for Petitioner to respond would have begun running on Monday, October 31, 1994. Similarly, the eighth applicable day after October 31, 1994 was November 10, 1994, **the very day that the court signed the order of default.**

Petitioner suggests further deprivation of his ability to defend his constitutionally protected property right when the Circuit Court for Frederick County, on appeal from the District Court, violated Maryland Rule 7-113(h) (**APPENDIX**, page 30), by failing to "render a concise opinion, which shall be reduced to writing and filed with the

clerk." The Circuit court's "Order" (**APPENDIX**, page 2) is nothing more than that, and clearly devoid of any indication that it purported to be an opinion. Rather it simply recited that the court read and considered memoranda submitted by counsel, heard oral argument, found that the trial court did not abuse its discretion in entering a default judgment against the Petitioner herein, and concluded by affirming the judgment of the District Court.

Petitioner suggests that case of *Shum v Gaudreau*, 322 Md 242, 587 A2d 248 (1991) is persuasive to a resolution of its contention. There the court indicated that

> "The parties who prosecute an appeal on the record are entitled to at least a brief opinion demonstrating that the appellate court has considered the issues presented to it, and stating briefly the decisions made on each issue. Moreover, the only review available to a party disappointed by the judgment of the circuit court in that instance is by way of petition for certiorari to this Court, and we must have the benefit of at least a concise opinion dealing with the issues in order to determine whether certiorari should be granted."

Petitioner suggests that a fundamental requirement of procedural due process mandated the Circuit Court's reducing to writing an explanation of the legal basis for its affirmance of the lower court, *Hameetman v City of Chicago*, 776 F2d 636, at 644 (1985) (U.S.C.A. 7th Circuit), especially in view of the need for Petitioner to have such an explication in order to be able to frame any application for review to a

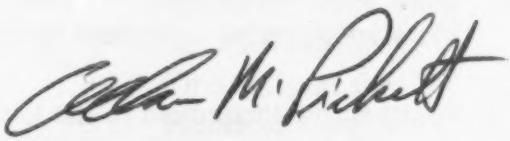
higher court.

Petitioner avers that having clearly established both a constitutionally protected property right and a clear deprivation of that right, it only remains to determine what process was due him. By illegally ordering Petitioner in default, the District court deprived him of his fundamental right to a hearing, wherein he could assert substantive defenses to Respondent's claim against him. Likewise, in both the District Court and on appeal to the Circuit Court, Petitioner was faced with "the obstacle of overcoming an adverse decree" which placed the burden upon Petitioner to establish grounds for vacation of the default judgment erroneously entered against him. *Armstrong v Manzo*, 380 U.S. 545, at 551, 85 S.Ct. 1187, at 1191, 14 L.Ed2d 62. In view of the circumstances in this case, the only process which would pass constitutional muster would be to afford Petitioner an evidentiary hearing on the merits, as should have been awarded by the District Court and/or duly sanctioned by the Circuit Court on appeal.

Conclusion

Implicit in the fundamental notion of procedural due process, as mandated by the Fifth and Fourteenth Amendments to the United States Constitution, is the right of a civil litigant to a fair and meaningful hearing, based upon accurate findings of fact by the trier upon which legally correct conclusions of law can be made. The aggrieved party likewise is entitled on appeal to, at a minimum, a concise recitation by the appellate court that it considered each of the issues raised by the appellant, and the legal basis for its findings regarding those issues, reduced to writing. In the instant case, Petitioner was deprived of the fundamental fairness required in such hearings by the panoply of uncorrected factual errors offered by the opposing party and

adopted by the trier, as well as the clearly illegal misapplications of procedural rules designed specifically to insure that due process is afforded those subject to those rules. Petitioner was likewise deprived, in view of an explicit statute requiring such, of the constitutional process due him to be apprised of the basis of the appellate court's reasoning in affirming the lower court.



Respectfully submitted
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PRO SE

APPENDIX

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ALLAN PICKETT	*	In the
V	*	Court of Appeals
AMERICAN BREEDERS SERVICE	*	Of Maryland
	*	Petition Docket No. 505
	*	September Term, 1996 (No. 95-644-CV Circuit Court for Frederick County)

ORDER

Upon consideration of the petition for a writ of certiorari to the Circuit Court for Frederick County, and the answer filed thereto, in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert M. Bell

Chief Judge

Date: DEC 11 1996

IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND

AMERICAN BREEDERS SERVICE
Plaintiff *

VS. * CASE NO. 95-0644-CV

ALLAN M. PICKETT *
Defendant

* * * * * * * * *

ORDER

The memoranda submitted herein by the parties having been read and considered, and the court having heard oral argument and finding that the trial judge did not abuse his discretion in entering a judgment by default against the Defendant, having ruled from the bench in open court on 26 September 1995, it is this 4th day of September, 1996, by the Circuit Court for Frederick County, Maryland,

ORDERED, that the judgment of the District Court of Maryland for Frederick county herein be affirmed.

/s/ John H. Tisdale

John H. Tisdale
Judge

True Copy Test:
/s/ Charles C. Keller, Clerk

Filed SEP 6 1 40 PM '96
Charles C. Keller, Clerk

AMERICAN BREEDERS SERVICE, A DIVISION OF W.R. GRACE & CO. Plaintiff	*	IN THE
	*	DISTRICT COURT
	*	OF MARYLAND
vs.		
	*	FOR FREDERICK
ALLAN PICKETT Defendant	*	COUNTY
	*	CASE:11010001366-94
	*	TRIAL DATE: 9/30/94

****

ORDER

Upon the aforegoing Motion and the state of the pleadings it is this 10th day of November, 1994, by the District (sic)

ORDERED, that Judgment by default be and the same is hereby entered against the Defendant. Set for Trial.

/s/ W. Milnor Roberts

AMENDMENT 14

Section 1. Citizens of the United States.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sec. 2. Representatives-Power to reduce apportionment.

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Sec. 3. Disqualification to hold office.

No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of

Congress, or as an officer of the United States, or as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Sec. 4. Public debt not to be questioned-Debts of the Confederacy and claims not to be paid.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slaves; but all such debts, obligations, and claims shall be held illegal and void.

Sec. 5 Power to enforce amendment.

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ALLAN M. PICKETT	IN THE COURT OF
PETITIONER	APPEALS OF
V	MARYLAND
AMERICAN BREEDERS SERVICE	September Term, 1996
	Case No.
DEFENDANT	

PETITION FOR WRIT OF CERTIORARI

Comes now ALLAN M. PICKETT, PETITIONER herein, by William L. Haugh, Jr., his attorney, and Petitions this Honorable Court pursuant to Maryland Rule 8-302(b)(2)(B) and Section 12-305(1), Courts and Judicial Proceedings Article, ANNOTATED CODE OF MARYLAND, for a Writ of Certiorari directed to the Circuit Court for Frederick County, and as grounds therefore, states as follows:

1. Your Petitioner is the Defendant in Case No.95-0644-CV in the Circuit Court for Frederick County styled as "**AMERICAN BREEDERS SERVICE, Plaintiff vs. ALLAN M. PICKETT, Defendant**." This case is an Appeal by your Petitioner on the Record, to the Circuit Court, pursuant to Maryland Rule 7-102(a), from a decision rendered by the District Court for Frederick County on January 13, 1995, in Case No. 1366-94, styled in the same fashion, rendering default judgment against your Petitioner and in favor of the Defendant herein, American Breeders Service, for Eleven Thousand, Seven Hundred Forty-One Dollars, Ten Cents ($11,741.10) plus costs of Forty-Five Dollars ($45.00) and post trial interest. This case neither has been decided by nor been before the Court of Special

Appeals.

2. After oral arguments were presented before the Circuit Court (The Honorable John H. Tisdale presiding) at a hearing on September 26, 1995, the court, in an Order filed on September 6, 1996, affirmed the judgment of the District Court for Frederick County. A copy of the aforesaid Order is attached as Petitioner's Exhibit 1. Petitioner also has attached the docket entry evidencing the judgment of the Circuit Court as Exhibit 2.

3. On September 16, 1996, your Petitioner herein filed a Motion to Alter or Amend Judgment and Request for Hearing, pursuant to Maryland Rule 2-534, alleging that the Order of the Circuit Court filed on September 6, 1996 failed to comply with Maryland Rule 7-113(h), which requires the Circuit Court to render a concise opinion to support its finding. A copy of Petitioner's Motion is attached as Exhibit 3. Defendant herein American Breeders Service's response to the Motion to Alter or Amend Judgment is attached as Exhibit 4.

4. In an Order filed on October 4, 1996, the Circuit Court, without holding a hearing as requested by Petitioner, denied Petitioner's Motion to Alter or Amend Judgment. It is from this judgment that Petitioner has filed his request for a Writ of Certiorari. A copy of the aforesaid Order is attached as Petitioner's Exhibit 5.

5. The aforesaid Order filed October 4, 1996 by the Circuit Court for Frederick County is a final adjudication of all claims in the aforesaid action in their entirety, and renders a final judgment against Petitioner and in favor of the Defendant herein for the amount indicated, supra.

6. Pursuant to Maryland Rule 8-422, Petitioner

herein has filed a Supersedeas Bond in the amount of $15,000.00, a copy of which is attached hereto as Petitioner's Exhibit 6. Petitioner avers that the Defendant will not be prejudiced by this Honorable Court's staying, pursuant to Maryland Rule 8-303(e), the enforcement or execution of the aforesaid judgment of the Circuit Court for Frederick County upon the filing of this Petition.

7. The question presented for review is whether Exhibit 1 herein, the Order of the Circuit Court for Frederick County filed on September 6, 1996, complies with Maryland Rule 7-113(h), which requires the Circuit court to "render a concise **opinion** (emphasis supplied), ... , reduced to writing and filed with the clerk."

8. Petitioner believes, and thereby avers, that review of this case is necessary to secure uniformity of decision and/or the facts of this case constitute special circumstances rendering it desirable and in the public interest that the decision be reviewed.

FACTS

Petitioner incorporates by reference the factual allegations contained in Paragraphs 1-8, supra, and the Exhibits attached. Petitioner notes that although a hearing was held on September 25, 1996, the Order of Court rendering decision on that hearing was not forthcoming for nearly one year, namely, on September 6, 1996.

ARGUMENT

Maryland Rule 7-113(h) provides in part that in rendering a decision on an appeal from the District Court on the record, the Circuit court is to "render a concise opinion, ... , reduced to writing and filed with the clerk." The term

"Opinion" is defined in Black's Law Dictionary, 6th Edition, at page 1094 as

> "The statement by a judge or court of the decision reached in regard to a cause tried or argued before them, **expounding the law as applied to the case**, and **detailing the reasons upon which the judgment is issued**."
> (Emphasis supplied)

Similarly, the term "Order" is defined, at page 1096 as

> "Direction of a court or judge made or entered in writing and not included in a judgment, which determines some point or directs some step in the proceeding."

A "Final Order" is defined as, at page 1096

> "One which either terminates the action itself, or finally decides some matter litigated by the parties, or operates to divest some right, or one which completely disposes of the subject-matter and the rights of the parties."

The order in question is the Circuit Court's decision of September 4, 1996 and appended as Petitioner's Exhibit 1. Curiously, the document is devoid of any reference to an opinion to be given by the court, and is simply titled "**ORDER**." The "Order" merely recites that the court read and considered memoranda submitted by counsel, heard oral argument, found that the trial court did not abuse its

discretion in entering a default judgment against the Defendant (Petitioner herein), and concluded by affirming the ruling of the District Court.

In Shum v Gaudreau, 322 Md. 242 (1991), (cited in Kirchner v Caughey, 326 Md 567 (1992)), this Honorable Court granted a writ of certiorari to the Circuit court, which had decided an appeal from the District Court on the record, and remanded the case to the lower court for the entry of an opinion.[1] The lower court, in deciding the appeal on the record, had issued an opinion indicating

> "Counsel heard. Court affirmed decision of lower court with a correction of $100.00 to be deducted from the award." Ibid, page 245.

The court stated the reasoning for the rule and the necessity for its application in the case:

> "We recognize the problems encountered by a busy trial court that must also function as an appellate court. Nevertheless, the requirement of Rule 1392 is clear, and it exists for good reason. The parties who prosecute an appeal on the record are entitled to at least a brief opinion demonstrating that the appellate court has considered the issues presented to it, and stating briefly the decisions made on each issue. Moreover, the only review available to a party

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[1] The court in the Shum case ordered the opinion to be in conformity with Maryland Rule 1392, which is now Rule 7-113(h).

> disappointed by the judgment of the circuit court in that instance is by way of petition for certiorari to this Court, and **we must have the benefit of at least a concise opinion dealing with the issues in order to determine whether certiorari should be granted**."
> (Emphasis supplied)

Petitioner contends that the "Order" filed by the Circuit Court for Frederick County on September 6, 1996 can be likened to that which this Honorable Court found lacking in the Shum case, supra. Other than a recitation of the chronology of his determination of the case, the Circuit Court's "Order" is simply that and nothing more. It clearly fits the definition of a "Final Order" in that it was dispositive of the issues in the case. However, it is completely devoid of any analysis of how the Circuit Court applied the law to the facts as it found them to exist, and the reasons for those findings, if in fact any were made. While clearly recognizing that the Circuit Court is burdened with overcrowded dockets, Petitioner cannot help but note that the Circuit Court's decision in this case was not forthcoming for nearly one year. In addition, it should be noted that there is no evidence that the the Circuit Court, pursuant to Maryland Rule 2-311(e), made any finding as to whether a hearing should have been held on Petitioner's Motion to Alter or Amend. Instead, the Circuit Court simply signed the order prepared by counsel for American Breeders Service denying Petitioner's motion. By being deprived of a hearing on his Motion to Alter or Amend, Petitioner was denied the opportunity to direct the Court's attention to the similarity of the factual nexus which formed the basis of the holding in Shum to the present case. Petitioner suggests that this too led to his having to file the

Petition herein to this Honorable Court. Thus, Petitioner respectfully suggests that this case is clearly akin to the pertinent factual circumstances in the Shum case, and in view of same, Petitioner asks that this court grant the Petition for Writ of Certiorari and remand this case to the Circuit Court for Frederick County so that it may issue an Opinion consistent with the mandates of Maryland Rule 7-113(h)

WHEREFORE, your Petitioner prays:

1. That this Honorable Court grant the Petition for Certiorari filed by the Petitioner herein, Allan M. Pickett, and remand this matter to the Circuit Court for Frederick County for the entry of a judgment accompanied by an opinion that conforms to the requirements of Maryland Rule 7-113(h).

2. That this Honorable Court, pursuant to Maryland Rule 8-303(e), stay the enforcement and/or execution of the judgment of the Circuit Court as of the filing of this Petition, pending this Honorable Court's determination of the Petition.

3. And for such other and further relief as the nature of this cause may require.

/s/ Allan M. Pickett

_____

Allan M. Pickett, Petitioner

/s/ William L. Haugh, Jr.

_____

William L. Haugh, Esq.
30 West Patrick St.
Suite 330
Frederick, Md. 21701
(301) 663-0148
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of November, 1996, a copy of the foregoing Petition for Writ of Certiorari was mailed first class postage prepaid to Sidney S. Friedman, Esq., and Greg I. Rose, Esq., Weinstock, Stevan, Harris, and Friedman, 345 North Charles Street, Baltimore, Maryland, 21201-4355, Attorneys for American Breeders Service.

/s/ William L. Haugh, Jr.

William L. Haugh, Jr.

HEARING OF SEPTEMBER 30, 1994

HONORABLE JUDGE MILNER ROBERTS

COURT: American Breeders Service vs. Allan Pickett

ATTORNEY: Plaintiff your Honor here. Your Honor I move for a preliminary matter I believe.

COURT: Alright (sic) come forward.

ATTORNEY: Your Honor (inaudible) on behalf of the Plaintiff. Mr. Pickett (inaudible) to answer Interrogatories pursuant to a Show Cause Order signed by Your honor (sic) as of this day I do not have the Answers to Interrogatories and - -ah - - although I have a witness here we were are not sure what defenses are being raised (sic) the statement of account of this case goes back approximately five years (sic) unless we can limit the issues involved this case is going to take a half of day (sic) to try. If we can have some cooperation with regard to discovery to find out exactly what the dispute is and what issues are being - - what invoices are being contested perhaps we can narrow the issues down a little bit.

COURT: Mr. Pickett?

MR. PICKETT: Ah - - yes sir I filed mailed - - ah - - just recently the Interrogatories to the attorney I called yesterday and notified them.

COURT: You mailed Answers to Interrogatories? Have you received those counsel?

ATTORNEY: No.

COURT: Alright (sic) there are in the court's file - -

ATTORNEY: When were they mailed Your Honor?

COURT: Filed as of yesterday at 4:00 in the afternoon.

COURT: What's your pleasure counsel - - what do you wish to do?

ATTORNEY: Your Honor we would like an opportunity to review the Answers to Interrogatories - - I mean at this point I would ask that the judgment be entered as to liability and that we have this thing reset for ex parti (sic) proof of damages.

COURT: I'm not willing to do that (sic) I will do it this way. I'm going to continue this matter so that you have the opportunity to review these Answers to Interrogatories - - I'll reset it upon your request and your estimate of the trial time - - so nothing else is going to happen until I hear from Plaintiff on this thing. I will give you the opportunity to review the Interrogatories and estimate the trial time. Anything else?

ATTORNEY: Should we ask that it be specially set if its going to be more than two hours?

COURT: Give the estimated trial time and we - - thats (sic) more than a session so ah - - if you want to use the word specially set thats (sic) fine (sic) that will attract the clerks (sic) attention.

ATTORNEY: Very good.

COURT: Alright (sic) Mr. Picket this you will hear further on this matter (sic) you are both excused.

MR. PICKETT: Thank you Judge.

ATTORNEY: Thank you (sic)

IN THE DISTRICT COURT FOR FREDERICK COUNTY

AMERICAN BREEDERS
SERVICE

VS. CASE NO. 1366-94

ALLAN PICKETT

The above captioned case was before the Court on January 13, 1995.

BEFORE:

The Honorable W. Milnor Roberts

APPEARANCES:

Sidney S. Friedman, Esquire
(for the Plaintiff)

Allan Pickett
(In Proper Person)

PROCEEDINGS

COURT: I'll call the case of American Breeders Service versus Allan Picket. Counsel, good afternoon.

MR. FRIEDMAN: Good afternoon, Your Honor. Sidney Friedman on behalf of the Plaintiff. I have a witness with me. A gentleman by the name of Doug Baker from American Breeders Service.

COURT: All right. Well, let's - - before we a - - sir, you can have a seat.Thereer is a motion to vacate the order of default. I will note that the respondent or the Defendant is not here. I assume you deny the terms of that motion, is that correct?

MR. FRIEDMAN: Yes, Your Honor.

COURT: That motion is denied for failure of the Defendant to prosecute that motion. You can proceed with your testimony.

MR. FRIEDMAN: Thank you, Your Honor. Just for the record, so that - - to be eminently fair, I did see the Defendant - -

COURT: You did.

MR. FRIEDMAN: Or my client saw him outside. I don't understand why he is not in the courtroom.

COURT: All right.

MR. FRIEDMAN: Do you want me to go look for him.

COURT: Yes, otherwise we'll - -

MR. FRIEDMAN: Because this man - -

COURT: We'll do this again.

MR. FRIEDMAN: I know.

COURT: Have a seat.

MR. FRIEDMAN: Thank you.

COURT: Now we've lost the Bailiff. Might have to send the Sheriff out next.

MR. FRIEDMAN: Do you want me to go out - -

COURT: No, he is probably in the other courtroom.

MR. FRIEDMAN: Yes.

COURT: And he is probably having trouble interrupting that.

MR. FRIEDMAN: Yes.

COURT: But it is possible that Mr. Pickett is over there.

MR. FRIEDMAN: It is possible.

COURT: I think that there were some people here and eventually they were sent over expecting a possibly lengthy trial.

MR. FRIEDMAN: Yes.

COURT: I quite often suggest to attorneys that are anxious to move for a default that they might want to at least look around. Did - -

BAILIFF: Can't find anyone in the hall. As soon as they finish this case, which is going to take another minute, (unclear) over there.

COURT: All right. You want to wait or - -

MR. FRIEDMAN: I can send my client to see if he is sitting in the courtroom.

COURT: All right. That's fine. Why don't you do that.

MR. FRIEDMAN: Because he knows what he looks like

COURT: Okay. Thank you. The problem is we try it twice, we try it this time and then after a motion to vacate because the witness was in the other room.

MR. FRIEDMAN: Oh, yeah. This will be about my third or fourth trip up here on this case.

COURT: Yes, I see, we've had some history with this.

MR. FRIEDMAN: Yes.

(Long Pause)

COURT: All right. Sir, tell us your name?

MR. PICKETT: Allan Pickett

COURT: All right. Mr. Pickett, this is the case of American Breeders Service versus Allan Pickett. You filed a

motion to vacate an order. Would you stand up, please, and tell us why you filed that?

MR. PICKETT: Yes, Sir. Just one second here.

(Long Pause)

MR. PICKETT: I filed a motion to vacate the order - - because the petition that the attorney filed said - - I filed interrogatories because the motion says I didn't.

COURT: No, sir, I think it says just the opposite. It says that he filed - - that the Plaintiff filed interrogatories and you didn't answer them.

MR. PICKETT: Well, I - - I answered interrogatories is what I mean. His a - - his motion says that I did not produce this. His motion also says that on September 30 - -

COURT: Now, Mr. Pickett, sir, I can't hear you. Sir, let's start with your - - you're saying you did answer interrogatories?

MR. PICKETT: Yes.

COURT: All right. I see no record of that in the Court's file. What was the date that you filed the notice that you answered interrogatories?

MR. PICKETT: The a - - I have a copy - -

MR. FRIEDMAN: Your Honor, if I could be of some assistance, there, I will tell you that he filed one page answers, which I indicated to the Court on September 30, were not under oath, and were not even responsive to the questions.

In particular, number six which had asked him to set

out in detail the basis of his defense or allegations of defense, in which he was claiming billing errors in our statement. He didn't do that.

The judge, that day, and I really don't remember who was presiding on September 30, ordered him to answer those questions more fully and under oath. He never did that,

As a result, I refiled subsequent to September 30. It looks like a motion for sanctions. And the Court granted it.

COURT: Well, now, Mr. Pickett, when we had the September 30 hearing, that one page answer was in the file but that was determined to be insufficient and this motion for sanctions was filed alleging that you still had not adequately answered the interrogatories - -

MR. PICKETT: A - -

COURT: In the requisite time past with you not responding to that motion and thereafter an order placing you in default was signed. Now, that is the status of the case.

MR. PICKETT: Okay. Number four in my motion to vacate the order, the parties were not ordered to narrow the issues on September 30, 1994. We were - - we were here, it was before you, Sir. And we were here probably thirty seconds. There was no order to vacate a - - to narrow the issues. The a - - the attorney just wanted some time to look at the interrogatories. And a - - you had told him to a - - send a notice in to reschedule it.

I'm sure you have the tape recording that will verify that I was not ordered to a - - narrow any issues. The interrogatories were filed and the attorney just requested that. And it is only about thirty - - thirty seconds, not more than a minute, on the Court's record.

At the same I filed a request for a jury trial with that.

And the - - intent to defend.

COURT: Sir, the time for filing a request for a jury trial had long expired at that time. Is thee anything else you would like to say on your motion to vacate?

MR. PICKETT: Yes.

(Long Pause)

MR. PICKETT: In a - - in rule - - I just found this Rule 3-421, Section G. It says motion for order compelling discovery - - that within five days after service of the response the discovering party may file motion for an order compelling discovery, or to challenge an answer or refusal to answer interrogatory. The motion shall set forth the interrogatory to answer or objection and the reasons why discovery should be compelled. A response to the motion may be filed within five days after service. That time had expired.

COURT: That time what?

MR. PICKETT: The five days had went by before the - - attorney had filed a motion for sanctions by a month.

(Long Pause)

MR. PICKETT: See, the interrogatories were filed September 29.

(Long Pause)

MR. PICKETT: And I'm sure if you want to listen to the tape, from that day, you will see that - - I am correct, there was no order that day, it was a - - just a few words and we were in here. And a - -

(Long Pause)

COURT: Mr. Pickett, anything else?

(Long Pause)

COURT: Mr. Pickett, is there anything else you wish to say? In support of your motion?

MR. PICKETT: That a - - that the - - the mistakes were that the attorney put those statements in that motion and they were - - he was not the attorney here at the time. There was another attorney here. And a - -

I have answered the interrogatories and most of the information has to come from - - to the best of my ability I've answered the interrogatories. There is - - there is - - some things I don't know. I have no records of at that time.

COURT: All right. Have a seat. I'll hear from the Plaintiff.

MR. FRIEDMAN: Well, Your Honor, I think the first thing the Court should note is that he hasn't answered the interrogatories because they were not filed under oath, and that was the original thing that I objected to when I filed my first motion for sanctions prior to September 30.

It looks like, in reviewing the records, he was talking - - he handed us the interrogatory answers - - or sent them to my office the day before September 30, when the last trial date was scheduled.

And he is right, I was not here that day. And my client tells me one of my associates was here. I don't know what the court said. Only what my associate told me.

In looking at the - - answers - - it is clear tome that they are not under oath and that he has failed to set forth in particular, in response to interrogatory number six, what it is he objects to about our statement and our billing. He is alleging in a vague way that there are billing errors. I was

seeking to find out specifically what it was that he was objecting to and that's the other basis for my motion for sanctions.

So I guess the basis for the sanctions were - - or our objections to his answers were one, they were vague. And two, they were not under oath.

Either one of which would have been sufficient for this Court to enter a motion for sanctions, as it did. Or rather a default judgement (sic).

MR. PICKETT: I would just like to respond that a - - on the bottom of the interrogatories that, I certified the above to be true and correct. He has - -

COURT: Anything else, Mr. Pickett?

(Long Pause)

MR. PICKETT: Just a - - I filed the notice - - the notice - - that the intent to defend and the jury trial, all that, all that on the twenty-ninth of a - - September.

COURT: All right. Sir, have a seat.

MR. FRIEDMAN: May I respond, Your Honor. I - -

COURT: It is not necessary.

MR. FRIEDMAN: I do have to correct for the record. He did filed it under oath. I see that now.

COURT: I see that.

MR. FRIEDMAN: It is under oath, so I apologize.

COURT: All right. The gist of the motion for sanctions

was that the answers to interrogatories were not adequate. The Court allowed the proper statutory time for the Respondent to correct or to respond in a motion, neither of which he did withing that time.

The motion for sanction was granted. The Court found that the answers for interrogatories were not sufficient or adequate. The order was signed on November 10 placing the defendant in default. The Court declines to vacate the order. . . .

AMERICAN BREEDERS SERVICE, A DIVISION OF W.R. GRACE & CO.	*	IN THE
Plaintiff	*	DISTRICT COURT
	*	COURT OF
vs.	*	MARYLAND FOR
ALLAN PICKETT		
Defendant	*	FREDERICK
	*	COUNTY
	*	CASE:11010001366-94
	*	TRIAL DATE:

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MOTION FOR SANCTIONS

AMERICAN BREEDERS SERVICE, Plaintiff, by WEINSTOCK, STEVAN, HARRIS & FRIEDMAN, P.A., and Sidney S. Friedman, Esquire, its attorneys, moves this honorable Court to grant a judgment by default in its favor in the above captioned case and to award its costs, and as grounds therefore says:

1. The Plaintiff filed suit against the Defendant in The (sic) District Court for Carroll County on or about January 3, 1994

2. On or about April 25, 1994, this office was notified of a dispute or defense filed by the Defendant and the case was transferred to this Honorable Court.

3. Plaintiff served Interrogatories on the Defendant on or about May 26, 1994.

4. To date said Interrogatories have not been produced to the Plaintiff or to the Court. The defendant is therefore in default of Rule 3-421 (h) of the Maryland Rules.

5. At hearing on September 30, 1994, this Honorable Court Ordered the parties to narrow the issues before rescheduling this matter for trial. Attached hereto is (sic) letter dated October 10, 1994, requesting Mr. Pickett to explain the errors in billing and commissions he claims as part of his defense. To date Mr. Pickett has not responded to the letter of October 10, 1994.

WHEREFORE, the Plaintiff requests sanctions in the form of Judgment by Default against the Defendant for failure to respond to interrogatory questions.

/s/ Sidney S. Friedman

_____

WEINSTOCK, STEVAN,
HARRIS & FRIEDMAN
Sidney S. Friedman
345 N. Charles St.
Baltimore, Md. 21201
(410) 727-6700
Attorney for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff, by its attorneys, WEINSTOCK, STEVAN, HARRIS & FRIEDMAN, P.A., and Sidney S. Friedman, relies on the following points and authorities (sic) in support of its Motion for Sanctions.

1. Rule 3-421 (g) (h) Maryland Rules.
2. Kipness vs. McManus, 14 Md. App. 362 (1972).
3. Broadwater vs. Arch, 267 Md. 329 (1972).

4. Mason vs. Wolfing, 265 Md. 234 (1972)
5. Typinds vs. Allied Painting & Decorating Co., 13 Md. App. 433 (1971)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 28th day of OCTOBER, 1994, a copy of the foregoing Motion for Sanctions/Request for Dafault (sic) Judgment was mailed first class, postage repaid to: ALLAN PICKETT, 170 BAUGHMANS LANE, FREDERICK, MD (SIC) 21701, Defendant.

/s/ Sidney S. Friedman

Sidney S. Friedman

Rule 7-113. APPEALS HEARD ON THE RECORD

(a) Scope.- This Rule applies only to appeals heard on the record of the District Court.

(b) Filing of Transcript.

(1) Unless a copy of the transcript is already on file, the appellant, within 10 days after the date the first notice of appeal is filed, shall order in writing from the clerk of the district Court a transcript containing:

(A) a transcription of (I) all the testimony or (ii) that part of the testimony that the parties agree, by written stipulation filed with the clerk of the District Court, is necessary for the appeal; and

(B) a transcription of any other proceeding relevant to the appeal that was recorded pursuant to Maryland District Rule 1224.

(2) The clerk of the district court shall cause the original transcript to be filed promptly for inclusion in the record, and shall advise the appellant when the transcript has been filed. The appellant shall promptly serve a copy on the appellee.

(c) Notice by Clerk.- Upon the filing of the record, the clerk of the circuit court shall enter the appeal on the docket and shall send to the parties a notice stating the date the appeal was entered on the docket and shall send to the parties a notice stating the date the appeal was entered on the docket and the assigned docket reference. The notice shall also advise the appellant that a memorandum complying with Rule 7-113 must be filed within 30 days after the date the appeal was entered on the docket.

(d) Memorandum and Response.

(1) the appellant shall file a memorandum in opposition to the decision of the district Court within 30 days after the date the appeal was entered on the docket or as otherwise ordered by the court. The appellee may file a response within 15 days after service of the appellant's

memorandum, but in no event later than five days before the date of argument, if argument has been scheduled.

(2) In addition to otherwise complying with Rule 1-301, a memorandum or response shall be typewritten or printed, shall be double spaced, and shall not exceed ten pages in length. The appellant's memorandum shall contain (A) a statement of the questions presented for review, (B) a concise statement of the facts material to a determination of the questions presented, and (C) argument in support of the appellant's position, stating the grounds for the relief sought and the authorities in support of each ground. The appellee's response shall contain argument in support of the decision of the District court, stating the grounds for affirmance and the authorities in support of such ground.

(3) If an appellant fails to file a memorandum within the time prescribed by this Rule, the circuit court may dismiss the appeal if it finds that the failure to file or the late filing caused prejudice to the moving party. An appellee who fails to file a memorandum within the time prescribed by this rule may not present argument except with the permission of the court.

(e) Oral Argument.- A party desiring oral argument shall request it in the memorandum or response under the heading "Request for Oral Argument." Unless oral argument is requested by a party ordered by the circuit court, the appeal shall be decided without oral argument.

(f) Scope of Review.- The circuit court will review the case on both the law and the evidence. It will not set aside the judgment of the district Court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the District Court to judge the credibility of the witnesses.

(g) Disposition.

(1) as to each party to an appeal, the circuit court shall by order dispose of an appeal in one of the following ways:

(A) dismiss the appeal pursuant to Rule 7-114;

(B) affirm the judgment;

(C) vacate or reverse the judgment;

(D) modify the judgment;

(E) remand the action in accordance with subsection (2) of this sections, or

(F) an appropriate combination of the above.

(2) If the circuit court concludes that the substantial merits of a case will not be determined by affirming, reversing, or modifying the judgment, or that justice will be served by permitting further proceedings, the court may remand the case to the District court. In the order remanding a case, the circuit court shall state the purpose for the remand. The order of remand and the opinion upon which the order is based are conclusive as to the points decided. Upon remand, the District Court shall conduct any further proceedings necessary to determine the action in accordance with the opinion and order of the circuit court.

(h) Opinion.- In every appeal, the circuit court shall render a concise opinion, which shall be reduced to writing and filed with the clerk.

Rule 3-421. INTERROGATORIES TO PARTIES

(a) Scope.- Unless otherwise limited by order of the court in accordance with this Rule, the scope of discovery by interrogatories is a follows:

(1) *Generally.-* A party may obtain discovery regarding any matter, not privileged, including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter, if the matter sought is relevant to the subject matter involved in the action, whether it relates to the claim or defense of any other party. It is not ground for objection that the information sought is already known to or otherwise obtainable by the party seeking discovery or that the information will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. An interrogatory otherwise proper is not objectionable merely because the response involves an opinion or contention that relates to fact or the application of law to fact.

(2) *Insurance Agreements.-* A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business might be liable to satisfy part or all of a judgment that might be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this subsection, an application for insurance shall not be treated as part of an insurance agreement,

(3) *Request for Documents by Interrogatory.-* a party by interrogatory may request the party upon whom the interrogatory is served to attach to the response or submit for inspection the original or an exact copy of the following:

(A) any written instrument upon which a claim or defense is founded;

(B) a statement concerning the action or its subject matter previously made by the party seeking discovery, whether a written statement signed or otherwise adopted or approved by that party, or a stenographic, mechanical, electrical, or other recording, or a transcription thereof, that is a substantially verbatim recital of an oral statement made by that party contemporaneously recorded; and

(C) any written report, whether acquired or developed in anticipation of litigation or for trial, made by an expert whom the responding party expects to call as an expert witness at trial. If the responding party fails to furnish a written report requested pursuant to this subsection, the court, upon motion of the discovering party, may enter any order that justice requires, including an order refusing to admit the testimony of the expert.

(b) Availability; Number; Time for Filing.- Any party may serve written interrogatories directed to any other party. Unless the court orders otherwise, a party may serve only one set of not more than 15 interrogatories to be answered by the same party. Interrogatories, however, grouped, combined or arranged and even though subsidiary or incidental to or dependent upon other interrogatories, shall be counted separately. The plaintiff may serve interrogatories no later than ten days after the date on which the clerk mails the notice required by Rule 3-307 (d). The defendant may serve interrogatories no later than ten days after the time for filing a notice of intention to defend.

(c) Protective Order.- On motion of a party filed within five days after service of interrogatories upon that party, and for good cause shown, the court may enter any order that justice requires to protect the party from annoyance, embarrassment, oppression, or undue burden or expense.

(d) Response.- The party to whom the interrogatories are

directed shall serve a response withing 15 days after service of the interrogatories or within five days after the date on which that party's notice of intention to defend is required, whichever is later. The response shall answer each interrogatory separately and fully in writing under oath, or shall state fully the grounds for refusal to answer any interrogatory. The response shall set forth each interrogatory followed by its answer. An answer shall include all information available to the party directly or through agents, representatives, or attorneys. The response shall be signed by the party making it.

(e) Option to Produce Business Records.- When (1) the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has ben served or from an examination, audit, or inspection of those business records or a compilation, abstract, or summary of them, and (2) the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, and (30 the party upon whom the interrogatory has been served has not already derived or ascertained the information requested, it is a sufficient answer to the interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect the records and to make copies, compilations, abstracts, or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

(f) Supplementation of Response.- A party who has responded to interrogatories and who obtains further material information before trail shall supplement the response promptly.

(g) Motion for Order Compelling Discovery.- Within five days after service of the response, the discovering party

may file a motion for an order compelling discovery in order to challenge an answer or refusal to answer an interrogatory. The motion shall set forth the interrogatory, the answer or objection, and the reasons why discovery should be compelled. A response to the motion may be filed within five

days after its service. Promptly after the time for the response has expired, the court shall decide the motion without a hearing.

(h) Sanctions for Failure to Respond.- when a party to whom interrogatories are directed fails to serve a response after proper service of the interrogatories, the discovering party, upon reasonable notice to other parties, may move for sanctions. The court, if it finds a failure of discovery, may enter such orders in regard to the failure as are just, including an order refusing to allow the failing party to support or oppose designated claims or defenses or prohibiting that party from introducing designated matter in evidence, or an order striking out pleadings or parts, thereof, staying further proceedings until the discovery is provided, dismissing the action or any part thereof, or entering a judgment by default against the failing party if the court is satisfied that it has personal jurisdiction over that party.

(I) Use of Answers.-Answers served by a party to interrogatories may be used by any other party at the trial or a hearing to the extent permitted by the rules of evidence. If only part of an answer is offered in evidence by a party, an adverse party may require the offering party to introduce at that time any other part that in fairness ought to be considered with the part offered.

Rule 3-311. MOTIONS

(a) Generally.- an application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, and shall set forth the relief or order sought.

(b) Statement of Grounds; Exhibits.- A written motion and a response to a motion shall state with particularity the grounds. A party shall attach as an exhibit to a written motion or response any document that the party wishes the court to consider in ruling on the motion or response unless the document is adopted by reference as permitted by Rule 3-308(d) or set forth as permitted by Rule 3-421(g).

(c) Hearing-Motions for New Trial or to Amend the Judgment.- When a motion is filed pursuant to Rule 3-533 or 3-534, the court shall determine in each case whether a hearing will be held, but it may not grant the motion without a hearing.

(d) Hearing-Other Motions.- a party desiring a hearing on a motion, other than a motion filed pursuant to Rule 3-533 or 3-534, shall file a timely written request. The request of the moving party shall be included in the motion under the heading "Request for Hearing," and the request of a party served with a motion shall be made by filing a "Request for Hearing" within five days after service. Upon a timely request, a hearing shall be held except as provided in Rule 3-421(g). The court may hear and decide the motion before or at trial. If no hearing is requested, the court may decide the motion without a hearing at any time.

Rule 1-203. TIME

(a) Computation of Time After an Act, Event, or Default.- In computing any period of time prescribed by these rules, by rule or order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not included. If the period of time allowed is more than seven days, intermediate Saturdays, Sundays, and legal holidays are counted; but if the period of time allowed is seven days or less, intermediate Saturdays, Sundays, and legal holidays are not counted. The last day of the period so computed is included unless:

(1) it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday; or

(2) the act to be done is the filing of some paper in court and the office of the clerk of that court on the last day of the period is not open, or is closed for a part of a day, in which event the period runs until the end of the next day which is not a Saturday, Sunday, legal holiday, or a day on which the office is not open during its regular hours.

(b) Computation of Time Before a Day, Act, or Event.- In determining the latest day for performance of an act which is required by these rules, by rule or order of court, or by any applicable statute, to be performed a prescribed number of days before a certain day, act, or event, all days prior thereto, including intervening Saturdays, Sundays, and legal holidays, are counted in the number of days so prescribed. The latest day is included in the determination unless it is a Saturday, Sunday, or legal holiday, in which event the latest day is the first preceding day which is not a Saturday, Sunday, or legal holiday.

(c) Certain Legal Holidays.- for purposes of the computation of time under this Rule, "legal holiday" included Lincoln's Birthday, Maryland Day, Good Friday and

Defenders' Day.

(d) Additional Time After Service by Mail.- whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after service upon the party of a notice or other paper and service is made by mail, three days shall be added to the prescribed period.

Rule 7-102. MODES OF APPEAL

(a) On the Record.- An appeal shall be heard on the record made in the District Court in the following cases:

(1) a civil action in which the amount in controversy exceeds $2500 exclusive of interest, costs, and attorney's fees if attorney's fees are recoverable by law or contract;

(2) any matter arising under Section 4-401 (7) (ii) of the Courts Article;

(3) any civil or criminal action in which the parties so agree;

(4) an appeal from an order or judgment of direct criminal contempt if the sentence imposed by the District Court was less than 90 days' imprisonment; and

(5) an appeal by the State from a judgment quashing or dismissing a chargin document or granting a motion to dismiss in a criminal case.

(b) De Novo.- An appeal shall be tried de novo in all other civil and criminal actions, including a criminal action in which sentence has been imposed or suspended following a plea of guilty or nolo contendere, an appeal in a municipal infraction or Code violation case, and an appeal under code, Family Law Article, Section 4-507 from the granting or denying of a petition seeking relief from abuse.